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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/419,927	10/18/1999	MARINUS BLAABJERG SORENSEN	MCG046US	2102

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EXAMINER

HAMUD, FOZIA M

ART UNIT

PAPER NUMBER

1647

DATE MAILED: 12/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

09/419,927

Applicant(s)

SORENSEN, MARINUS  
BLAABJERG

Examiner

Fozia M Hamud

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10, 12-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

1a. Receipt of Applicants' arguments and amendments filed on 06 October 2003 is acknowledged. Claim 11 is cancelled and claims 10, 12-14 have been added.

#### ***Status of Claims:***

1b. Claims 1-9 and 11 have been cancelled. Claims 10, 12-15 are pending and under consideration.

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#### ***Response to Amendment:***

2. The following previous objections and rejections are withdrawn in light of Applicants amendment filed on, 10/06/03:

- (I) The rejection of claims 10, 12-15 made under 35 U.S.C. 112, first paragraph.
- (II) The rejection of claims 10, 12-15 made under 35 U.S.C. 112, second paragraph.

#### ***Specification:***

3. The amendment filed 06 October 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the amendment to the table on page 14, changes the cloning efficiencies of two for the experiments. Applicant states that the amendment to the specification is filed to correct two errors in the reported results of the experiments, however, there is no apparent error to the values. The cloning efficiency values are changed from 11/15 to 5/15 for one experiment and 3/15 to 15/15 for the second experiment. This amendment alters the

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results dramatically, and there is no support for this amendment elsewhere in the specification.

Applicant is required to cancel the new matter or provide support for the amendment in the reply to this Office action.

***New Claim Rejections:***

***Claim Rejections - 35 U.S.C. §112***

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4a. Claims 10, 12-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Instant claims are directed to a composition comprising an extensin and at least one pectin, wherein the combination of pectin with extensin is in a ratio higher than that seen in natural plant cells. However, instant specification does not describe the ratio of extensin to pectin. The instant specification states that a combination of pectin and extensin higher than seen in natural plants can be used in a therapeutic method to modulate immune responses, (see the bridge between pages 10 and 11). However, the specification does not disclose what said ratio is, or how much higher than natural value should it be. The specification discloses the structure of extensin and the

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structure of pectin is well known in the art. However, instant claims are directed to a composition comprising extensin and pectin in a specific ratio, however, instant specification does not disclose enough information regarding what the ratio of extensin and pectin should be to satisfy the written description provision, under 35 U.S.C. 112, first paragraph. *Vas-Cath Inc. V. Mahurkar*, 19 USPQ2d 1111, clearly states that "applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention. The invention is, for purposes of the 'written description' inquiry, whatever is now claimed." (See page 1117). The specification does not "clearly allow persons of ordinary skill in the art to recognize that [he or she] invented what is claimed." (See *Vas-Cath* at page 1116).

Therefore, the ratio of the extensin to pectin for the claimed composition has not been disclosed on the instant specification, to satisfy the written description provision of 35 U.S.C. 112, first paragraph.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 10, 12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3a. Claim 10 recites " ..., wherein the combination of pectin with extensin is in higher ratio than that seen in natural plants cells..", however, it is unclear how much of extensin and how much of pectin should the claimed composition comprise? The metes and

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bounds of the claim cannot be ascertained. Reciting the ratio of extensin and pectin, would overcome this rejection.

Claims 12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite, so long as they depend on claim 10 for the limitations set forth directly above.

**Conclusion:**

5. No claim is allowed.

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The claims are free of prior art of record.


**Advisory Information:**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fozia M Hamud whose telephone number is (703) 308-8891. The examiner can normally be reached on Monday, Wednesday-Thursday, 6:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on (703) 308-4623. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4227.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Fozia Hamud  
Patent Examiner  
Unit Art 1647  
22 December 2003

  
GARY KUNZ  
SUPERVISORY PATENT EXAMINER  
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